



March 2, 2015, 2015

Ms. Mary Ann Powell  
Olson & Olson, L.L.P.  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019

OR2015-04037

Dear Ms. Powell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 558062 (City Ref. No. COB15-002).

The City of Brookshire (the "city"), which you represent, received a request for information related to a specified incident, including police, ambulance, and fire department reports. You state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to 552.147(b) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *Id.* § 552.147(b).

chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You assert the submitted information includes the originating telephone numbers and addresses of 9-1-1 callers. Upon review, however, we find the city has failed to demonstrate any of the submitted information consists of an originating telephone number or address of a 9-1-1 caller furnished by a service supplier so as to be subject to chapter 772 of the Health and Safety Code. Therefore, none of the submitted information is confidential under chapter 772 of the Health and Safety Code, and the city may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the Texas Homeland Security Act (the "HSA"), sections 418.176 through 418.182 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.181 provides as follows:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Gov't Code § 418.181; *see generally id.* § 421.001 (defining critical infrastructure to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, and functions vital to the state or the nation"). The fact that information may pertain to public or private infrastructure or may generally be related to emergency preparedness does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Moreover, the mere recitation of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under the HSA must be accompanied by an adequate explanation of how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You claim some of the submitted information, which you have marked, is confidential under section 418.181. You assert the information at issue "contains instructions for creating a specific product that is hazardous under the criteria of the Federal OSHA Hazard Communication Standard 29 [and] is [listed] on the EPA Toxic Substance Control Act . . . Inventory List." However, you have not provided any specific arguments demonstrating, nor

can we discern, how the information at issue identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Accordingly, we find the city has failed to demonstrate the applicability of section 418.181 of the Government Code to the information at issue. Therefore, the city may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs the release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.


Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).

Upon review, we find none of the submitted information consists of a physician-patient communication or a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the MPA. Accordingly, the city must release the submitted information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 558062

Enc. Submitted documents

c: Requestor  
(w/o enclosures)